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SUBJECT: USG DELEGATION ADDRESSES CAFTA LABOR SUBMISSION

REF: REF: A) GUATEMALA 788 B) GUATEMALA 647

1. (SBU) SUMMARY: In a series of meetings in Guatemala the week of September 29, civil society and union leaders presented a visiting USG inter-agency delegation with a generally bleak assessment of the country's labor environment. They asserted that the government has made little headway in addressing the country's systemic labor problems in the ten months since the United States Department of Labor issued its report in response to a submission made by U.S. and Guatemalan labor unions under procedures provided for in the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). They further claimed that employers continue to routinely violate worker rights with impunity; workers have little understanding of those rights in the first place and fear losing their jobs if they do try to exercise them; the Ministry of Labor lacks the manpower and authority to do its job effectively and is not taken seriously by the business community; labor inspectors are poorly-trained, and frequently corrupt, and; the judicial system is extremely slow and tends to favor the employers.

2. (SBU) Given these perceptions, some union leaders expressed their frustration that the United States has not taken stronger actions in response to the submission, including seeking dispute settlement consultations under Chapter 16 of the CAFTA-DR. Government officials, meanwhile, profess that they are taking their commitment under the CAFTA-DR very seriously, and provided updates on efforts undertaken to address the issues raised in the report, including the development of a long term action plan. End Summary.

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Delegation mission:  
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3. (SBU) A seven-member interagency delegation from the USTR and the Departments of Labor and State returned to Guatemala the week of September 29 to follow-up on a visit it made in July regarding the CAFTA labor submission (Ref A). The team had several goals: to gather further data on whether the issues raised in the DOL report represented systemic failures by the Government of Guatemala (GOG) to effectively enforce its labor laws under the CAFTA-DR; to identify possible measures the GOG could take to address remaining shortcomings; to remind the GOG of the importance the United States attaches to the unions' submission, and; to urge it to act quickly to resolve the specific cases cited in the DOL report as well as to develop a long-term work plan to address systemic problems highlighted in the report.

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Worker grievances dominated by salary, contract, safety issues:

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14. (SBU) Personnel from three small worker right centers - the only ones in the country - provided the delegation with a useful snapshot of typical Guatemalan worker grievances. Two of the centers are located in the eastern coastal state of Izabal, known for its banana, sugar, and African palm oil plantations. The centers - one in Puerto Barrios and the other in El Estor - were opened in April with CAFTA-DR funds provided through the Department of Labor's "Campo a Campo" project. Their principal goal is to help workers in agricultural communities understand and exercise their labor rights.

15. (SBU) In a six-month period from April to September, the two Izabal centers provided advice and legal support in 645 cases. Of these cases, four principal types of complaints emerged, alleging:

-- the failure of employers to pay the minimum wage of Q52 a day (a little over \$6);

-- the failure of employers to honor contract terms, or legally mandated entitlements;

-- dismissal without proper cause;

-- occupational health and safety issues.

16. (SBU) Data gathered by a third worker rights center in the western highland city of Chimaltenango revealed similar issues confronted by workers. The worker rights center is managed by the Center for Study and Support for Local Development (CEADEL) as part of USDOL's "Todos y Todas Trabajamos" project. In the past year, CEADEL handled 544 cases, many of them related to Guatemala's garment industry, which is centered in the city. Forty percent of these cases were associated with dismissal without proper cause, including firings when workers become pregnant. Another 34 percent were associated with the illegal suspension of contracts, while eight percent were related to the failure to pay an agreed salary.

17. (SBU) CEADEL officials told the delegation that many of the cases in which it provides legal support are collective in nature. CEADEL claimed that the fact that the textile industry has managed to prevent unions from establishing a foothold in Guatemala's garment industry makes responding to these cases in a collective manner very difficult. Fear of reprisal and lack of confidence in the judicial system discourages many workers from registering labor complaints. In addition, according to CEADEL's data, only about ten percent of garment workers have been registered in the national social security system by their employers as required by law.

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Civil society and unions agree: Ministry of Labor is broken

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¶8. (SBU) Several of the delegation's civil society and union interlocutors alleged that employers are brazen about violating worker rights because they have no fear of government sanction. The Ministry of Labor (MOL) was a universal target of their criticism. To begin with, the 250 labor inspectors in the Ministry are insufficient to cover a country with a population of 14 million. Additionally, they claimed, the inspectors are poorly paid and lack sufficient training.

¶9. (SBU) According to the union officials, although the country's labor code requires inspectors to act pro-actively to avoid labor violations, the reality is that few ever show any initiative. They alleged that when inspectors do undertake efforts to promote conciliation in labor disputes, the negotiations are nearly always done on terms favorable to the employer. There are cases where workers have evidence of what they are owed in back pay or bonuses, and despite this evidence, the inspectors have negotiated a settlement between the workers and their employers for an amount below what the workers are entitled to under the law. In another instance, CEADEL reported that its labor lawyer was barred by the MOL from representing workers in mediation efforts on the grounds that these negotiations were taking place on private (factory) property. They acknowledged that the MOL decision to exclude CEADEL from the mediation was within the strict interpretation of the law, but that in some cases, CEADEL had reached agreement with the parties to be present.

¶10. (SBU) The most frequent accusation about labor inspectors that the delegation heard, however, had to do with corruption. Inspectors were accused of warning employers in advance of their visits and, in some cases, of having ties to the employers. Those inspectors suspended for unprofessional conduct or malfeasance are reinstated at a later date, according to CEADEL.

¶11. (SBU) Most of the non-private sector contacts with whom the delegation met also heavily criticized a court decision several years ago which ruled that the Ministry of Labor did not have the constitutional authority to levy fines on those employers who do not comply with the labor code. Stripping this authority from the MOL significantly reduced its ability to ensure compliance with labor laws.

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Litigating through the court system - "not worth the effort"  
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¶12. (SBU) Many of the delegation's interlocutors also complained bitterly about the futility of pressing cases through the labor courts, which they assert are riddled with inefficiency and corruption. There are many challenges that discourage the average agricultural or textile worker from filing a case in the first place. One is overcoming the fear of repression or blacklisting, as described earlier. Others are related to logistics and expense: a banana plantation worker in Izabal, for example, might have to travel two or three hours to file a case at the court in Puerto Barrios. That same trip by bus might cost him nearly Q40, most of a day's wage, in addition to another day's wages lost for missing work.

¶13. (SBU) Once a case is filed and moves forward in the court system, employers can file motions for injunctions ("amparos"),

many of which are characterized as frivolous, to delay or stop the process. The delay tactics often convince workers, particularly those with limited means, to give up their legal case or to negotiate a settlement for less than what they are entitled to under the law. One union leader told the delegation that it is more effective to file grievances directly with the international parent company. For example, by dealing directly with the Coca-Cola Corporation in Atlanta, one union was able to get Coke franchises in Guatemala to standardize their labor practices. Another union leader asserted that Guatemala's labor courts are excessively bureaucratic and litigating through them is simply "not worth the effort."

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## Chapter 16 Dispute Settlement Consultations - Why the delay?

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¶14. (SBU) The general consensus among the delegation's non-governmental contacts is that CAFTA-DR has not improved labor conditions in Guatemala since the trade agreement went into effect in 2006. In an emotional intervention, the Secretary General of FESTRAS, the federation of unions in the food service industry and related sectors, reproached the United States for not having moved forward yet with dispute settlement consultations under Chapter 16. The time for action has arrived, he said. We need the United States to show political will, to move forward with next steps, and produce results. We feel a lot of frustration.

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What can be done?

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¶15. (SBU) Despite their grim overall assessment of Guatemala's labor environment, the civil society and union contacts with whom the delegation met did not hesitate to make recommendations on what could be done to improve it. The most common suggestion offered was to pass legislation that would restore the MOL the authority to

levy meaningful fines on employers who violate the labor code. Another common recommendation was to devote more resources to the MOL - to increase the number of labor inspectors and give them better salaries and training.

¶16. (SBU) Other common suggestions that emerged were to:

-- structurally reform the labor code;

-- provide better training to judges on implementing the labor code;

-- streamline the excessively bureaucratic appeals process;

-- require factories to inform the MOL and workers when they plan to close;

-- convince the Ministry of Economy to more vigorously exercise its authority to withdraw tax exemption and trade privileges from those companies that courts find are in violation of the labor code;

-- involve civil society organizations and unions in the deliberations in the government's multi-institutional committee on labor issues;

-- enforce court rulings, and;

-- get the government to exercise political will to address systemic labor problems.

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GoG Reaction: We are working to address the problems  
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¶17. (SBU) The government authorities with whom the delegation met had a decidedly different view of the progress the GOG was making in addressing the country's labor challenges. MFA Vice Minister Lars Pira asserted that the government was taking DOL's labor report very seriously. The main problem, he confided, was not one between employer and employee but rather the fact that the judiciary does not function properly. Pira downplayed the extent of the country's labor problems, pleading for the United States not to allow "the poor performance of a couple of companies to damage CAFTA-DR."

¶18. (SBU) Labor Vice Minister Illescas assured the delegation that the GOG was working hard to address the specific issues raised in the report as well as to develop a detailed work plan to respond to the country's broader labor challenges, as he promised would be done the last time the team visited in July. Delivery of the plan had been delayed, however, by unexpected changes in the government. He reported that the Multi-Institutional Commission on Labor Issues had met September 28, and had approved the draft action plan for addressing systemic problems. The delegation welcomed that news, but urged the Vice Minister to incorporate additional details and target timelines in the action plan.

¶19. (SBU) Economy Vice Minister Oscar Velasquez acknowledged that the Ministry of Economy has the authority to suspend tax exemption and trade benefits if companies are found in violation of the labor

code. He indicated that the Ministries of Economy and Labor were working together to share information on companies that were in violation of labor laws and to better coordinate the use of the provision to suspend a company's tax exemption. He and the Labor Vice Minister maintained that the GoG was prepared to use this authority with more frequency than in the past. When asked by the delegation why the government does not publicize the availability of this remedy for labor law violations, Labor Inspector General Giovanni Soto suggested that warning the companies in advance would permit employers to game the system by outsourcing their work to companies that will not be punished.

¶20. (SBU) In response, the delegation emphasized the importance the USG attaches to the DOL report and reminded its GOG contacts of the significant domestic pressure that is being exerted in the United

States to make sure CAFTA-DR works the way it was intended. The delegation also restated the importance of developing a detailed work plan, one that includes effective remedies to address Guatemala's systemic labor problems, as well as clear phases and dates for their implementation. One possible work plan item, the team suggested, might be a commitment to restore the MOL's authority to impose meaningful fines on misbehaving employers. Another element might be a commitment on the part of the Ministry of Economy to exercise the authority it already has with respect to granting tax benefits and trade privileges. Such sanctions would only be effective if consistently applied, the delegation suggested. Finally, the delegation noted that the failure to adequately respond to the specific issues in the DOL report and to the country's broader systemic labor challenges risks damaging Guatemala's reputation as a trading partner, particularly in key sectors like textiles and agriculture.

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Comment:  
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¶21. (SBU) Most of the complaints the delegation heard during its visit were general in nature, and few of the civil society and union leaders with whom the team met were prepared at the time to offer additional, well-documented cases of the government's failure to enforce domestic labor law. Although some unions did provide documentation about cases that might demonstrate that the GOG has failed to enforce domestic labor law, most unions and civil society organizations offered to send additional information on specific cases at a later date. The meetings, however, did confirm that Guatemala's culture of impunity pervades the country's labor environment. In the absence of functioning government bureaucracies and courts, and with no real fear of penalties for non-compliance, the overall impression the delegation came away with is that the GOG needs to take more concrete steps to ensure that the issues identified in the DOL report are addressed.

¶22. (SBU) Perhaps the most encouraging signs the delegation witnessed were in the work being performed by the three small worker rights centers in Izabal and Chimaltenango. The case data they briefed to the delegation indicated that they are having a measurable impact in educating workers on their labor rights and in helping them to win cases in labor courts. As CEADEL's lawyer told the team, "We are making work for the inspectors. They no longer always seek to resolve cases in favor of the employer. I have seen changes and we are making progress." With tiny budgets and staffs, however, the reach of the three centers does not extend much beyond the two departments in which they are located. The centers are funded in part by USG CAFTA-DR labor capacity building funds administered by the Department of Labor. The significant positive impact the centers have had in the regions they cover suggests that additional such centers could be beneficial in addressing the access of workers to labor justice. End comment.

¶23. (U) The delegation has cleared this cable.  
ROBINSON